

KENTUCKY SALES TAX FACTS

A REVENUE PUBLICATION FOR THE BUSINESS OWNER

DECEMBER 2015

Storm Water and Waste Water Fees

Storm water and waste water fees charged by municipalities and other retailers that are part of sewer services provided to non-residential customers are subject to sales and use tax even if separately stated from other sewer service charges.

Kentucky sales tax is imposed on all retailers who provide sewer services as provided in KRS 139.200(2)(b) except for the residential exclusion covered in KRS 139.470(8).

Exemption for Sales by Schools or Nonprofit School-Sponsored Clubs and Organizations

Sales made by schools, school-sponsored clubs and organizations or affiliated groups are exempt from Kentucky sales and use tax per KRS 139.495 and KRS 139.497.

KRS 139.495(4) states, "Tax does not apply to sales by nonprofit, school-sponsored clubs and organizations, provided such sales do not include tickets for athletic events."

KRS 139.497(1) states in part that, "Sales by elementary or secondary schools or nonprofit elementary or secondary school-sponsored clubs and organizations or any nonprofit, elementary, or secondary school-affiliated groups such as parent-teacher organizations and booster clubs, whose membership may be composed of individuals other than students, provided the net proceeds from the sales are used solely for the benefit of the elementary or secondary school or its students."

Sales made by for-profit schools and their affiliated groups are subject to Kentucky sales tax under KRS 139.200 and such organizations must register to collect the tax under KRS 139.210

Purchase or Lease of Trailers

According to KRS 139.470(21), gross receipts from the sale of semi-trailers, as defined by KRS 189.010(12), are exempt from Kentucky sales and use tax. KRS 189.010(12) defines a "semitrailer" to mean a vehicle *designed to be attached to, and having its front end supported by, a motor truck or truck tractor, intended for the carrying of freight or merchandise and having a load capacity of over one thousand (1,000) pounds.*

The sale of a semi-trailer meeting this description is exempt by statute regardless of the manner in which the trailer is used after purchase. For example, semi-trailers that are sold or leased to a customer who subsequently uses the trailers for storage purposes rather than on the highway may still meet the definition of an exempt trailer described in KRS 139.470(21).

Please see the article on the [Shinin B Trailer Sales](#) litigation for information about horse trailers with living quarters.

Photo Booth Rentals

With traditional photography, if a photographer performs photography services at a special event, where the essence of the transaction is the professional services rendered by the photographer producing original prints, the charges are not subject to sales tax pursuant to Kentucky Regulation 103 KAR 27:120. With a professional photographer only the charges for reprints are treated as retail sales of tangible personal property. However, charges for the use of a photo booth for a special event such as a wedding, reunion, or reception may constitute gross receipts from a lease or rental of tangible personal property subject to sales tax as provided in Kentucky Regulation 103 KAR 28:051. The taxability depends upon the nature of the transaction. When the charges constitute the rental of tangible personal property as with a

photo booth without the need for an operator or photographer, then the rental charges would be subject to the 6% sales tax.

Credit Card Transaction Fees

Credit card transaction fees are not retail sales subject to sales tax in Kentucky. However, if a retailer includes this cost as a separate charge to the customer as a part of a retail sale, then this itemized charge is subject to sales and use tax. Although a separate charge on the invoice, the fee is a part of gross receipts as defined in KRS 139.010(12)(a)2 subject to Kentucky sales and use tax. As expenses of the retailer, these costs are typically passed on to the customer in one form or another. Whether imbedded in the cost of the product or separately stated, fees received from the customer for using a credit card are part of gross receipts and therefore subject to tax if the product sold is a taxable item.

Document Fees and Freight / Delivery Charges

In some retail transactions a seller may add processing or document fees to a customer's bill to defray the cost of paperwork associated with the sales transaction. These charges are for services necessary to complete the retail sale and are part of gross receipts subject to tax (KRS 139.010(12)(a)(3)). Similarly, freight and delivery is also taxable and should be included in gross receipts as stated in KRS 139.010(12)(a)4. If the product sold is taxable, document fees, and freight and delivery charges that are part of the sale are taxable. However, if the product being sold is exempt, then the document fees along with freight and delivery charges are exempt also. However, title transfer fees or fees for late payment that are specifically identified on the invoice to the customer are not included in taxable gross receipts as provided in KRS 139.010(12)(c).

Filing Tips for Paper Returns

See the December 2014 issue of the *Sales Tax Facts* newsletter.

Filing Tips for Online Returns

- The filing and payment due date is the 20th of the month for regular filers. Accelerated filer returns are due the 25th. If the due date falls on a state holiday or weekend, the due date is the following business day.
- Line 1 begins with Total Receipts, but **does not** include the sales tax (Note: does not apply to paper returns). Other retail charges passed on to the customer such as local restaurant tax, transient room tax, property tax, and shipping and handling charges must be included as total gross receipts.
- Amended returns may not be filed online at this time. This functionality should be available some time in 2016. Currently, to amend a return filed online, print a copy of the filed return, write the correct figures on this copy, and briefly explain the reason for making this amendment. Fax the amended return to the DOR at (502) 564-2041, or send a hard copy to the Kentucky Department of Revenue, PO Box 181, Station 67, Frankfort, KY, 40601.
- When an electronic payment is initiated and the payment is scheduled to be processed on a date different from the date of transaction, an e-mail confirmation will inform the taxpayer that the payment has been captured. This means that the DOR has received the transaction and the payment will be processed on the due date. If you are interested in filing your sales and use tax return electronically, please go to KY E-Tax at <http://revenue.ky.gov>. You may also email DORWEBResponseSalesTax@ky.gov if further assistance is required in KY E-Tax.
- Consumer's use tax account holders may now file their returns via KY E-Tax.

Litigation Updates

Sales and Use Tax

Shinin B Trailer Sales

In a Court of Appeals published opinion rendered September 4, 2015 in the case styled Department of Revenue v. Shinin B Trailer Sales LLC, the court determined that horse trailers with living quarters similar to those in RV's fall within the statutory exemption from sales tax per KRS 139.470(21). See the article on semi-trailers in this issue for further detail on the trailer exemption available under Kentucky sales tax law. The Court ruled that the horse trailers with living quarters that meet the design requirements of KRS Chapter 189.010 are eligible for the exemption regardless of what purpose the trailers are actually used. The Court of Appeals was not persuaded by the Department's argument that the existence of commodious living quarters indicated the design for recreational carriage of horses rather than as freight or merchandise. Any retailer collecting sales and use tax on the sale of horse trailers with living quarters meeting the design requirements of having their front end supported by a motor truck or truck tractor or supported wholly upon their own wheels with a load capacity for freight or merchandise of over one thousand (1,000) pounds should cease doing so until or unless there is a legislative change or other litigation that overturns the current decision.

Telecommunications Gross Receipts and Excise Taxes and Utility Gross Receipts License Tax

Netflix

This litigation involves telecommunications and utility gross receipts license taxes. In a decision by the Kentucky Board of Tax Appeals on September 23, 2015, the Board determined that Netflix's "streaming services" consisting of a subscription-based service that streams digital movies or television content over the internet for viewing on a television or other electronic device were not "multichannel video programming services" subject to the telecommunications and utility gross receipts license (UGRLT) taxes under KRS 136 and 160 respectively. This decision is on appeal by the Department of Revenue and further updates will be provided in either the Sales Tax Facts or Tax Alert publications. The Department believes these streaming services meet the definition of multichannel video programming service as programming provided by or generally considered comparable to programming provided by a television broadcast station. Taxpayers charging and remitting the telecommunications and UGRLT taxes on streaming services should continue to do so until instructed otherwise by the Department of Revenue. This litigation does not affect or encompass the application of sales and use tax.

Sales and Use Tax Seminar, Number Range Update

- A 2-hour sales and use tax seminar will be offered again in 2016 based on good response to the 2015 classes. If interested in attending a free seminar hosted by department staff, please contact the Division of Sales and Use Tax by phone, (502)564-5170, or email DORWebResponseSalesTax@ky.gov.
- In 2016, with the implementation of a new electronic registration system, the department is issuing retail sales tax permits in the 800,000 number range. Retail sales tax permits in the range of 1-399999 and 800000-899999 are currently valid. Consumer's use tax account numbers are still specifically in the 900000 number range.

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This newsletter is intended to provide practical information to assist persons in fulfilling their sales and use tax obligations to the Commonwealth.

This newsletter is archived on the Department of Revenue website at www.revenue.ky.gov and future editions may be accessed at the website.

To submit additional questions or suggestions for future topics, please write to:

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